

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Tribal Welfare- East Godavari District- Revision Petition filed by Sri.Datla Venkatapathi Raju S/O Venkatapathi Raju R/O Rajavommangi (V)&(M), East Godavari District under Section 6 of A.P.S.A.L.T.R, 1959 against the Orders of the Additional Agent to Government, Rampachodavaram in C.M.A No:7/2004 Dated:28-08-2004-Dismissed-Orders-Issued.

SOCIAL WELFARE (LTR-2) DEPARTMENT

G.O.Ms.No: 203

Dated:18 -11-2008.

Read the following:-

1. From Sri.K.Venkatesh , Counsel for the petitioner, Revision Petition dated: 27- 03-2005.
2. Govt. Memo No: 3151/LTR-2/05-1&2, Dated: 19-04-2005 .
3. From the Hon'ble High Court of A.P Order in W.P No: 12731/2005 dated: 16-06-2005.
4. From the Project Officer, ITDA RC varam CMA No:7 of 2004 dt:13-2-2006.
5. Govt. Memo No:3151/LTR-2/2005 dated: 23-08-2007.
6. Govt. Lr. No.3151/LTR-2/2005 dated:3-9-2007.

ORDER:

In the reference read above, Sri Datla Venkatapathi Raju S/O Venkatapathi Raju R/O Rajavommangi (V)& (M) East Godavari District has filed Revision Petition along with stay petition before the Government against the Orders of the Additional Agent to Government, Rampachodavaram in C.M.A No: 7/2004 dated: 28-08-2004, in respect of lands situated in R.S No:244/2, 244/4, 244/9, 244/15, 244/8 measuring Acres.1.03, Ac0.05, Ac1.92, Ac.0.78, Ac.1.08 respectively at Rajavommangi (V) &(M) of East Godavari District. The grounds submitted by the petitioner are as under:

- i) The land in question was purchased by the petitioner under a registered sale deed dt:24-5-1938 and hence the transfer is valid and legal.
- ii) Both the authorities failed to consider that the earlier proceedings in respect of the same land and between the same parties ended in favor of the petitioner and the present proceedings are barred by resjudicata.
- iii) The revision petitioner is in possession of the land as on today and hence the authorities ought not to have directed the eviction of the petitioner.
- iv) There is no prohibited transfer in the instant case and the authorities have no jurisdiction to initiate proceedings under LTR.

2. The brief history of the case is that a case was initiated by the Special Deputy Collector (T.W) against Kalimkota Rajulamma for restoration of the lands in Sy.No 244/2 extent Acres 1.03 cts., Sy.No. 244/4 extent 0.05 cts., Sy.No.244/9 extent Acres 1.92 cts., Sy.No.244/15 extent Acres 0.78 cts and 244/8 extent Acres 1.08 cents. of Raja Vommangi (V&M) of East Godavari District. The PS lands were purchased by Pusapati Simhachalaraju in 1938 with the permission of Revenue Divisional Officer, Peddapuram. The further sale of PS land was held between two non-tribals after commencement of Regulation 1/70. The High Court of Andhra Pradesh issued an order in WA No.238/2000 setting aside the order in WP No.13933/1998 dt:12-2-1999 with a direction to the Special Deputy Collector (TW), Peddapuram to issue Form E notice as was done in the cases of LTR No.110/96, and 88/97 under section 7(2) of the LTR Act. At the time Smt.Kalimkota Rajulamma W/o Gangayya of Rajavommangi filed a LTR Petition for restoration of the PS land after ejecting the non-tribal. The Special Deputy Collector (TW) Peddapuram, after due process ordered for ejection of the Non-Tribals from the PS Lands and for restoration of the same to the Government for onward assignment to eligible tribes and that the case of the petitioners could be considered for assignment according to their eligibility vide LTRP No.236/02, dt:5-3-2002. Aggrieved by the order of the Special Deputy Collector (TW), the petitioner filed an appeal before the Additional Agent to Government. The Additional Agent to Government in CMA No: 7/2004 dated:28-08-2004 confirmed the orders of the Special Deputy Collector (TW) and ordered for ejection of the Revision Petitioner (petitioners in the LTRP i.e Non-tribes) from the PS land and for restoration of the same to the Government for onward

assignment to eligible tribal and the tribal Respondents in CMA No.7/2004 dt:28-8-2004. Aggrieved by the Orders of the Additional Agent to Government, Sri.Datla Venkatapathi Raju, son of Venkatapathiraju of Rajavommangi (V), filed the Revision Petition before the Government.

3. In the reference 2nd read above, the Collector, East Godavari was requested to furnish parawise remarks and case records relating to the Revision Petition and the same were furnished vide reference 4th read above. After examination of the parawise remarks and case records notices were sent to the concerned to attend the hearing of the Revision Petition on 31-08-2007 vide reference 5th read above and finally was heard on 17-09-2007, the counsel for the petitioner was present and submitted the following written arguments:

- i) The petitioner's father had purchased the land in question in the year 1937, after obtaining permission from the Assistant Agent to Government Peddapuram and thus the transfer in favor of petitioner's father is valid and legal.
- ii) The Hon'ble Supreme Court held that the LT Regulation are prospective in nature and does not affect the transfer already made.
- iii) Both the authorities have not considered this aspect and directed ejectment from the land though the transfer taken place much prior to 1/1959 and that written permission was obtained from the Assistant Agent to Government at Peddapuram before purchasing.
- iv) Some third parties filed a complaint in LTRP No:236/2002 under the provisions of APSALTR.

4. Government after perusal of the material evidence on record and the written arguments filed by the counsel for the petitioner observed that :-

- i) It is a fact that the PS land was purchased by the petitioner in the year 1938 with permission of Revenue Divisional Officer, Peddapuram and this transfer of land was valid under Section 4 of Act 1/1917.
- ii) With regard to the contention of the petitioner that in view of the previous proceedings ended in his favour and the present proceedings are barred by resjudicata, the Hon'ble High Court full bench opined in W.A.No:238/2000, dated:13-06-2002 filed by the Special Deputy Collector(TW), Rampachodavaram and the Agent to Government against the WP No:13933/98 filed by the respondent i.e Datla Venkatapathi Raju (the petitioner herein) that in earlier proceedings a question of Scheduled land by the 1st respondent by way of transfer was held to be legal that circumstances itself could not come in way of statutory authority like 1st appellant i.e Special Deputy Collector(TW), to exercise powers conferred upon under Section 3 (2), if the 1st appellant i.e Special Deputy Collector(TW), subsequently comes to know that the respondent after such acquisition in turn, transferred the scheduled land in favor of 3rd party in breach of bar contained in sec 3 (10). As the parties and the issue that arises for consideration are different in earlier and present proceedings, the principal of Resjudicata had no application to the facts of this case. Accordingly WA:238/2000 was allowed and WP:13933/98 of Datla Venkatapathi Raju was dismissed. Since the direction of the Hon'ble High Court pertained to the LTRP No:236/2002 filed by Smt.Kalimkota Rajulamma, grand-daughter of Miryala Naganna who sold the petition schedule lands to Datla Venkatapathi Raju i.e revision petitioner, the Special Deputy Collector(T.W), Rampachodavaram enquired into the case and disposed off on 05-02-2003 as per merits based on the records available holding that the claim of the petitioner therein i.e Smt.Kalimkota Rajulamma is not genuine and acceptable in view of the fact that her grand father Miryala Naganna sold the PS lands in a registered document 193/38 with the permission of Revenue Divisional Officer, Peddapuram which was valid as per section 4 of Act of 1917 but evicted Pusapati Simhachalam Raju, a non-tribal who was in possession of the lands through a transfer made after regulation 1/70 came in to force through a transfer sale deed No:4675/71, dated:16-08-1971 executed by Datla Venkatapathi Raju i.e Revision Petitioner.
- iii) The contention of the petitioner that the petitioner is in possession of lands as on today and that there is no prohibited transfer, hence the authorities have no

jurisdiction to initiate LTR and eviction, is not correct. The sale of PS land in sale deed 4675/71, dated:16-08-1971 was held between the petitioner and another non-tribal Pusapati Simhachalaraju after commencement of LTR. Hence hit by LTR and is held null and void. In presence of clear sale deed 4675/71, obtained from District Registrar, the deposition of respondents regarding non occurrence of sale deed is ruled out. As all the earlier orders including WA 32/84 had not discussed about this prohibited sale deed on PS land and hence in view of orders of WA 238/2000, none of them apply Resjudicata in the present case.

- iv) The appellate authority had rightly held that the validity of transaction of other lands covered by such sale deed i.e 4675/71, dated: 16-08-1971 in other LTRP cases 19/97 and 88/97 pending before the Special Deputy Collector (TW), Rampachodavaram have the same legal validity and bind by the present proceedings under LTRP 236/2002, dated: 05-02-2003 of Special Deputy Collector (TW), Rampachodavaram. Hence, there is no necessity to conduct further enquiry in other LTRPs 19/97 and 88/97 as the material issue in the proceedings was already decided by virtue of sale deed 4675/71, dated:16-08-1971.
- v) There is no truth in the argument of petitioner's counsel that the Act operates prospectively and that the transfer had taken place much prior to 1/59. The transaction was made through registered document No: 4675/71 on 16-08-1971 which is after Regulation 1/70 came in to force w.e.f. 03.02.1970. The contents of sale agreement dated: 01-02-1970 are not related to the registered sale deed 4675/71 executed on 16-08-1971 and hence the sale agreement dated: 01-02-1970 was invented only to circumvent the LTR proceedings.
- vi) Therefore the transaction between the petitioner Sri Datla Venkatapathi Raju and Pusapati Simhachalaraju through the registered sale deed executed after the regulation 1/70 came into force has clearly attracted the provisions of section 3 (1)(a) and of APSALTR 1/59 R/W 1/70.
- vii) The claim of the tribal respondent is not genuine and acceptable as the transaction between their grand father Miriyala Naganna and Datla Venkatapathi Raju was in a registered document 193/38 with the permission of Revenue Divisional Officer, Peddapuram and valid under section 4 of Act 1/17. However, they may be considered for assignment, according to the eligibility along with other landless poor tribals.

5. Government after careful examination of the case records find no reason to interfere with the Orders of Agent to Government in CMA No:7/2004, dated:28-08-2004 and dismiss the Revision Petition accordingly.

6. The counsel for the petitioner is requested to inform his clients accordingly. The Agent to Government and PO, I.T.D.A, Rampachodavaram are requested to take necessary action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

A.K. TIGIDI,
Prl. Secretary to Government.

To:

The Collector, Rampachodavaram, East Godavari District

The Addl. Agent to Government & PO I.T.D.A, RC varam, East Godavari.

(With RPAD of the following records)

1. CMA No: 7/2004 containing pages (80)
2. LTRP No: 236/02 containing pages (44)

The Spl.Dy.Collector (TW), Rampachodavaram, East Godavari District.

Sri. Datla Venkatapathi Raju, Rajavommangi (V &M), East Godavari District.

Sri. Kalimkota Venkateswara Rao, Rajavommangi (V&M), East Godavari District.

Sri. K.Venkatesh, Advocate, H.No: 1-1-64/1, RTC X Roads, Hyderabad.

The P.S. to M (TW & RAID).

SF / SC

// FORWARDED BY ORDER //

SECTION OFFICER